

### **REMARKS**

The Election of Species Requirement dated May 11, 2010, has been reviewed and the comments of the U.S. Patent and Trademark Office have been considered. A detailed listing of all claims that are in the application, irrespective of whether the claims remain under examination in the application, is presented with an appropriately defined status identifier. Claims 1-25 are pending in this application.

### **SPECIES ELECTION**

The Office withdrew the restriction requirement mailed October 15, 2009 in light of the amendments to the claims filed January 15, 2010. In the current Action, the Office has imposed an election of the following species:

Species A, claims 2 and 23, drawn to where the cut-off value is determined as a function of treatment response data;

Species B, claims 3-6 and 13, drawn to where the cut-off value is determined by reference to a pathogen load drop. Should Species B be elected, the Examiner requires a further election of the following subspecies:

(i) claim 5; or

(ii) claim 6;

In addition, claim 13(i) would be examined and 13(ii) would be withdrawn.

Species C, claims 7, 8, and 13, drawn to where the cut-off value is determined by *Prob of success*. In addition, claim 13(ii) would be examined and 13(i) would be withdrawn.

In response, Applicants elect Species B, claims 3-6 and 13(i) directed to the cut-off value determined by reference to a pathogen load drop. In addition, subspecies (ii) for claim 6 is elected. Therefore, claims 1, 3-4, 6, 9-12, 13(i), 14-22, and 24-25 will be under prosecution and claims 2, 5, 7, 8, 13(ii) and 23 are withdrawn. Applicants' election is made without prejudice, and Applicants reserve the right to file divisional applications drawn to the non-elected inventions if appropriate.

As acknowledged by the Office, upon allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise require all of the limitations of an allowed generic claim. Currently, claims 1, 9-12,

14-22, 24 and 25 are generic. (Office Action at page 3). At present, withdrawn species of claims 2, 5, 7, 8, 13(ii) and 23 are dependent on generic claims.

### **CONCLUSION**

Applicants believe no fee is due with this submission. If a fee is due, however, the Director is authorized to charge any additional fees that may be required in conjunction with this submission to Deposit Account Number 50-2228, from which the undersigned is authorized to draw, under Order No. 026038.0265PTUS.

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Respectfully submitted,

By 

Therese M. Finan  
Registration No.: 42,533  
PATTON BOGGS LLP  
8484 Westpark Drive, 9th Floor  
McLean, Virginia 22102  
(703) 744-8069  
(703) 744-8001 (Fax)  
Attorney for Applicants